Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:MAN:3-POSTF-112813-02
EPFlores
BY FACSIMILE AND REGULAR MAIL

date: April 1, 2002

to: Paul Rinaldi, Territory Manager, Heavy Manufacturing, Construction and Transportation
Attention: [redacted]

from: Area Counsel, LMSB (Financial Services)

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subject: [redacted]
formerly known as [redacted]
Income Tax
Taxable Years [redacted] **and** [redacted]
Consent to Extend the Statute of Limitations
Statute of Limitations Expires [redacted] **(for** [redacted]**) and** [redacted] **(for** [redacted]**)**
UIL NOS. 1502.77-00, 6501.08-17

This memorandum is our response to your request for advice as to who is the proper party to execute a consent to extend the statute of limitations (the "consent") on behalf of the consolidated group [redacted] formerly known as [redacted] and [redacted] for the taxable years [redacted] and [redacted]. This memorandum should not be cited as precedent.

Our advice is based on the facts provided by you and that are set forth in this memorandum. The advice in this memorandum is conditioned on the accuracy of the facts you presented to us[1]. If you determine that these facts are incorrect, you should not rely on this advice.

This advice is subject to National Office review. That review might result in modifications to the conclusions contained herein. We will contact you to discuss the National Office's comments, if any, as soon as we hear from that office, which

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[1] We also incorporated the facts that you previously provided to us when you asked for similar advice for the taxable years [redacted] and [redacted].

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should be in approximately 10 days. In the meantime, you should consider the conclusions contained in this memorandum as preliminary.

As a preliminary matter, we recommend that you review the rules in the IRM. Specifically, IRM 121.2.22.3 requires the use of Letter 907(DO) to solicit the extension, and IRM 121.2.22.4.2 requires use of Letter 929(DO) to return the signed extension to the taxpayer. You should retain dated copies of both letters in the case file as directed. When the signed extension is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d). The AIMS/Processing Handbook (IRM 104.3) provides the procedures for processing consents to extend the statute of limitations on assessment. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. This includes Form 5348. In the event an extension becomes separated from the file or is lost, these other documents would become invaluable to establish that the taxpayer agreed to extend the statute of limitations.

Please note that Section 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. section 6501(c)(4)(B)[2], requires the Internal Revenue Service (the "Service") to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative, to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer in some other written form of the § 6501(c)(4)(B) requirement. In any event, you should document your actions in this regard in the case file.

ISSUE:

Who is the proper party to execute a consent to extend the statute of limitations (the "consent") on behalf of the consolidated group [redacted] formerly known as [redacted] for the taxable years [redacted] and [redacted]?

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[2] All references to "section" or "§" are to the Internal Revenue Code in effect during the years in question.

FACTS:

This consolidated group has been subject to numerous name changes and reorganizations. A summary of the relevant events is shown below:

[redacted] Divestiture of consolidated group ([redacted]) into three separate groups:

(1) [redacted]
EIN [redacted]

(2) [redacted][3]

(3) [redacted][4]

[redacted] issued new stock in these three companies to its existing shareholders. The result of this reorganization is as follows:

Name of Consolidated Group	**EIN**
[redacted] ("Old [redacted]") with the following three subsidiaries:	[redacted]
(1) [redacted] ("Old [redacted]")	[redacted]
(2) [redacted]'s	[redacted]
(3) [redacted] now known as [redacted].	[redacted]

[3] We do not have an EIN for this entity.

[4] We do not have an EIN for this entity.

[redacted] Divestiture of the consolidated group in a qualified tax-free spin off under § 355. See [redacted].

Step 1: In order to separate [redacted] from the consolidated group, Old [redacted] forms a new domestic corporation, [redacted] ("New [redacted]"), EIN [redacted].

Step 2: New [redacted] forms a new domestic subsidiary, [redacted] EIN [redacted]("New [redacted]").

Step 3: Old [redacted] merges out of existence into New [redacted].

Step 4: Old [redacted] transfers all of its assets, except its stock in [redacted], to New [redacted] in exchange for shares of New [redacted]'s stock and New [redacted]'s assumption of related liabilities[5].

Step 5: New [redacted] transfers all of its assets, except the stock of [redacted]'s and miscellaneous headquarters assets, to New [redacted] in exchange for all shares of New [redacted] and New [redacted]'s assumption of related liabilities.

Step 6: Old [redacted] distributes its stock in New [redacted] pro rata to its existing shareholders.

Step 7: Old [redacted] changes its name to [redacted].

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[5] Old [redacted] incurred these liabilities in the ordinary course of business and such liabilities are associated with the subject assets.

The result of this reorganization is as follows:

Name of Consolidated Group	**EIN**
New [redacted] with the following subsidiaries:	[redacted]
(1) New [redacted] (2) [redacted]'s	[redacted]
[redacted] formerly the [redacted]	[redacted]
(1) [redacted] formerly [redacted]	[redacted]

[redacted] [redacted] wholly owns [redacted] ("[redacted]")[6]

Step 1: [redacted] distributes certain of its subsidiaries to New [redacted] and New [redacted] distributes these subsidiaries to New [redacted].

Step 2: New [redacted] incorporates [redacted] EIN [redacted] ("[redacted]") as a wholly owned domestic subsidiary.

Step 3: [redacted] incorporates a wholly owned domestic subsidiary ("Transitory")[7].

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[6] See [redacted].

[7] We have no information on the actual name of this corporation.

Step 4: Transitory merges with and into New [redacted] with New [redacted], Inc. surviving. Pursuant to the merger, New [redacted]'s receives additional shares of [redacted]'s stock and New [redacted] becomes a wholly owned subsidiary of [redacted].

Step 5: New [redacted] distributes [redacted]'s stock to [redacted].

Step 6: New [redacted] contributes cash together with any remaining "non-Business B" assets to [redacted] and [redacted] assumes certain "non-Business B" liabilities and contingent obligations of New [redacted].

Step 7: New [redacted] distributes the [redacted] stock pro rata to New [redacted]'s existing shareholders.

Step 8: New [redacted] changes its name to [redacted].

DISCUSSION:

A. Proper Caption

Under § 6501(c)(4), the Service and a taxpayer may consent in writing to an extension of the time for making an assessment if the consent is executed before the expiration of the normal period of assessment or the extension date agreed upon in a prior extension agreement between the parties. In order to extend the period for assessment in the case of a corporate return, a consent must be executed by a duly authorized officer of the proper corporation. Under Treas. Reg. § 1.1502-77, the common parent is the sole agent for the subsidiaries in all matters relating to the tax liability for the consolidated return years, except for matters specifically excluded by the regulations. Since the authority to sign a consent to extend the statute of limitations on assessment is not excluded under the regulations, the common parent is the sole agent and must sign the consent.

The common parent remains the agent for the members of the group for years during which it was the common parent as long as it remains in existence even where a member leaves the group or even if the group terminates. Treas. Reg. § 1.1502-77(a); Craigie Inc. v. Commissioner, 84 T.C. 466 (1985) (the fact that petitioner-corporation ceased to be a member of the consolidated group did not sever the agency relationship; the former common parent's execution of a waiver was valid and binding upon petitioner-corporation even after it left the group).

Under these rules, the common parent is the highest tier domestic corporation. Prior to the [redacted] corporate reorganization, Old [redacted], EIN [redacted], was the highest tier domestic corporation. This entity, now known as [redacted], is the proper party to sign the consent to extend the statute of limitations for assessment. [redacted] is the same entity as the old common parent, formerly known as [redacted], even though it changed its name. This company is the former common parent with the same employer identification number and it continues to exist with assets of its own. Treas. Reg. § 1.1502-77(a) and (c).

Therefore, the name of the taxpayer on the consent form should read as follows:

[redacted] formerly [redacted], EIN [redacted]*.

Insert the following at the bottom of the first page of the consent:

*This is with respect to the consolidated tax liability of [redacted] (EIN [redacted]) [redacted] consolidated group for the taxable years ending [redacted] and [redacted].

B. Proper Individual To Sign The Consent

Under § 6061, any return, statement or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. In the case of corporate returns, § 6062 provides that a corporation's income tax return shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The regulations under § 6501(c)(4) do not specify who may sign consents executed under this section. Accordingly, the Service will apply the rules applicable to the execution of the original returns to the execution of consents to extend the time to make an assessment. Rev. Rul. 83-41, 1983-1 C.B. 349, <u>clarified and amplified</u>, Rev. Rul. 84-165, 1984-2 C.B. 305. Under Treas. Reg. § 1.6062-1, returns that are required to be made by corporations under the provisions of subtitle A or subtitle F of the Internal Revenue

Code for any tax imposed by subtitle A shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to sign such returns. Therefore, any such current officer of [redacted] formerly known as [redacted] is authorized to sign the consent and the name of this entity should be typed/written next to the term "Corporate Name" in the consent's signature blocks.

C. Transferee Liability

When Old [redacted] merged out of existence into New [redacted], New [redacted] became liable for its debts. We have discussed with you whether New [redacted] (now known as [redacted]), as the successor corporation by merger with Old [redacted], had to sign transferee consents. At this time, you do not have to secure the Form 2405, transferee liability agreement, and Form 977, consent to extend the time to assess transferee liability, from New [redacted] (now known as [redacted]). The Service should not obtain transferee consents against a successor entity unless it is in the last resort situation, i.e., when the statute of limitations under section 6501 has expired but the transferee statute of limitations under section 6901 is still open. In the instant case, we are not in the last resort situation.

CONCLUSION:

You should secure consents using the captions indicated in this memorandum. Furthermore, any such current officer of the entities described above, as described in Treas. Reg. § 1.6062-1, is authorized to execute the consents for the subject taxable years for the subject consolidated return. If you have any questions, please call Lisa Flores at 212-436-1142.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL
Area Counsel, LMSB
(Financial Services)

By: ________________________
PETER J. LABELLE
Associate Area Counsel